

RULE ADOPTED August 5, 2014

[THIS PAGE NOT FOR PUBLICATION IN THE CODE OF COLORADO REGULATIONS]

**DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
REAL ESTATE COMMISSION
4CCR 725-1**

D-14. ERRORS AND OMISSIONS (E&O) INSURANCE

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S, as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Real Estate Commission (the "Commission") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Commission.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules of the Colorado Real Estate Commission is Part 1 of Title 12, Article 61, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with the state statutes of the real estate practice act.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to amend or repeal existing rules with respect to requirements for license renewal, transfer, inactivation and errors and omissions insurance for real estate brokers.

Proposed New, Amended and Repealed Rules

[Deleted material shown ~~struck through~~, new material shown ALL CAPS. Rules, or portions of rules, which are unaffected are reproduced. Readers are advised to obtain a copy of the complete rules of the Board at www.dora.state.co.us/real-estate/.

D-14. Errors and omissions (E&O) insurance (See 12-61-103.6, C.R.S.)

Every active real estate licensee shall have in effect a policy of errors and omissions insurance to cover all acts requiring a license. In addition, all active licensed real estate companies that employ licensees in addition to the responsible broker must also have in effect a policy of errors and omissions insurance to cover all acts requiring a license.

- (a) The Commission shall enter into a contract with a qualified insurance carrier to make available to all licensees and license applicants a group policy of insurance under the following terms and conditions (hereafter referred to as the "Commission Insurance Policy"):
 - (1) The insurance carrier is licensed and authorized by the Colorado Division of Insurance to write policies of errors and omissions insurance in this state.
 - (2) The insurance carrier maintains an A.M. Best rating of "A-" or better.
 - (3) The insurance carrier will collect premiums, maintain records and report names of those insured and a record of claims to the Commission on a timely basis and at no expense to the state.
 - (4) The insurance carrier has been selected through a competitive bidding process.
 - (5) The contract and policy are in conformance with this rule and all relevant Colorado statutory requirements.
- (b) The Commission Insurance Policy shall provide, at a minimum, the following terms of coverage:
 - (1) Coverage for all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage.
 - (2) That the coverage cannot be canceled by the insurance carrier except for nonpayment of the premium or in the event a licensee becomes inactive or is revoked or an applicant is denied a license.
 - (3) Pro-ration of premiums for coverage which is purchased during the course of a calendar year but with no provision for refunds of unused premiums.
 - (4) Not less than \$100,000 coverage for each licensed individual and entity per covered claim regardless of the number of licensees or entities to which a settlement or claim may apply, not including costs of investigation and defense.
 - (5) An annual aggregate limit of not less than \$300,000 per licensed individual or entity, not including costs of investigation and defense.
 - (6) Coverage for investigation and defense shall be provided in addition to policy coverage limits.
 - (7) A deductible amount for each occurrence of not more than \$1,000 for claims and no deductible for legal expenses and defense.
 - (8) The obligation of the insurance carrier to defend all covered claims and the ability of the insured licensee to select counsel of choice subject to the written permission of the carrier, which shall not be unreasonably withheld.
 - (9) Coverage of a licensee's use of lock boxes, which coverage shall not be less than \$25,000 per occurrence.
 - (10) The ability of a licensee, upon payment of an additional premium, to obtain higher or excess coverage or to purchase additional coverage from the state carrier as may be determined by the carrier.
 - (11) That coverage is individual and license specific and will cover the licensee regardless of changes in employing broker.

- (12) The ability of a licensee, upon payment of an additional premium to obtain an extended reporting period of not less than 365 days.
- (13) A conformity endorsement allowing a Colorado resident licensee to meet the errors and omissions insurance requirement for an active license in another group mandated state without the need to purchase separate coverage in that state.
- (14) Prior acts coverage shall be offered to licensees with continuous past coverage.
- (c) Licensees or applicants may obtain errors and omissions coverage independent of the Commission Insurance Policy from any insurance carrier subject to the following terms and conditions:
 - (1) For both individual and entity/group policies, the insurance carrier must be licensed and authorized by the Colorado Division of Insurance to write policies of errors and omissions insurance in this state and must be in conformance with all Colorado statutes.
 - (2) The insurance provider maintains an A.M. Best rating of "A-" or better.
 - (3) Individual policies must, at a minimum, comply with the following conditions and the insurance carrier must certify compliance in an affidavit issued to the insured licensee or applicant in a form specified by the Commission. Insurance carrier agrees to immediately notify the Commission of any cancellation or lapse in coverage. Independent individual coverage must provide, at a minimum, the following:
 - (i) The contract and policy are in conformance with all relevant Colorado statutory requirements.
 - (ii) Coverage includes all acts for which a real estate license is required, except those illegal, fraudulent or other acts that are normally excluded from such coverage.
 - (iii) Coverage cannot be canceled by the insurance carrier except for nonpayment of the premium. Cancellation notice must be provided in a manner that complies with 10-4-109.7(1), C.R.S.
 - (iv) Coverage is for not less than \$100,000 for each licensed individual and entity per covered claim, with an annual aggregate limit of not less than \$300,000 per licensed individual and entity, not including costs of investigation and defense. coverage for investigation and defense shall be provided in addition to policy coverage limits.
 - (v) A deductible amount for each occurrence of not more than \$1,000 for claims and the provider shall look to the insured for payment of any deductible.
 - (vi) Payment of defense costs by the provider shall be on a first dollar basis. That is, the insured is not required to pay anything towards the cost of defense of any claim or complaint.
 - (vii) The ability of a licensee, upon payment of an additional premium to obtain an extended reporting period of not less than 365 days within sixty (60) days of the initial coverage ending.
 - (viii) That the provider of the independent policy has executed an affidavit in a form or manner specified by the commission attesting that the independent policy is in force and, at a minimum, complies with all relevant conditions set forth herein and that the provider will immediately notify the Commission in writing of any cancellation or lapse in coverage of any independent policy.
 - (ix) Coverage of a licensee's use of lock boxes, which coverage shall not be less than \$25,000 per occurrence.
 - (x) Prior acts coverage shall be offered to licensees with continuous past coverage.

- (4) For firms and sole-proprietor brokerages with independently carried firm coverage, section (3) will apply except sections (3)(iv), (3)(v) and (3)(x) shall be replaced with the following:
 - (i) The per claim limit shall be not less than \$1,000,000.
 - (ii) The aggregate limit shall be not less than \$1,000,000.
 - (iii) The maximum deductible amount for each occurrence shall not exceed \$10,000 and the provider shall look to the insured for payment of any deductible.
- (d) Applicants for licensure, activation, renewal and reinstatement shall certify compliance with this rule and 12-61-103.6, C.R.S., on forms or in a manner prescribed by the Commission. Any active licensee who so certifies and fails to obtain errors and omissions coverage or to provide proof of continuous coverage, either through the group carrier or directly to the Commission, shall be placed on inactive status:
 - (1) Immediately, if certification of current insurance coverage is not provided to the Commission; or,
 - (2) Immediately upon the expiration of any current insurance when certification of continued coverage is not provided.